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Report of the Special Rapporteur on the right to education on his mission to Chile

Note by the Secretariat

The Special Rapporteur on the right to education, Kishore Singh, undertook a mission to Chile from 28 March to 4 April 2016, the findings of which are contained in the present report. Unprecedented education reforms are under way in Chile, aimed at dismantling the legacy of market-based approaches in education that have led to a highly segregated and discriminatory education system. The Special Rapporteur welcomes the new model of education, which recognizes education as a right, not a commodity. His report presents an analysis of the emerging national legal system that is being developed in accordance with international standards, which constitute the basis of the reforms. The process has been facilitated by subjecting freedom of teaching to the country's international and constitutional obligations concerning the right to education, so that freedom of teaching is not unfettered. The report provides an overview of developments in education and equity-based measures, highlighting the challenges involved in giving concrete shape to the reforms. The Special Rapporteur underlines the need for stringent investigation into the financial operations of all private providers with transparency and full accountability and concludes with a series of recommendations that should help to strengthen the reforms.

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* Circulated in the language of submission and Spanish only.

I. Introduction

1. The Special Rapporteur on the right to education, Kishore Singh, carried out an official visit to Chile from 28 March to 4 April 2016, at the invitation of the Government.

2. On the first day of the visit, he had a highly enriching dialogue on education reforms with the President, Michelle Bachelet. The discussion centred on major initiatives and new policy approaches in education. He would like to express his deep gratitude to the President for giving him that opportunity.

3. During the eight-day visit, the Special Rapporteur held in-depth discussions with the Minister of Education and her team, the Minister of Social Development and senior officials from the Ministry of Labour and Social Security. He had an extensive dialogue with the President and members of the Constitutional Court and with representatives of the Education Commissions of both Congressional chambers.

4. The Special Rapporteur had the opportunity to visit a preschool, a public primary school, a technical secondary school and a high school and met with university professors and management, administrators, students, parents and teachers in Santiago and Antofagasta. Moreover, he met with several representatives from the international community, including representatives of United Nations bodies based in Santiago. He also met with members of the National Human Rights Institute and civil society organizations.

5. The Special Rapporteur expresses his gratitude to the Government for its invitation and full cooperation throughout the mission. He also extends his thanks to the staff of the Office of the United Nations High Commissioner for Human Rights in Santiago and in Geneva. He would like to thank all those who welcomed him and took time to share their experiences in a spirit of dialogue and cooperation.

II. Dismantling the legacy of market-based policies in education

6. Chile has been significantly marked by the 17 years of military dictatorship (1973-1990) led by General Augusto Pinochet. His Government pursued a liberal economic policy leading to a path of privatization in education on the basis of market oriented principles. The education system that evolved over that period developed mechanisms of selection, allowing schools to charge fees which, de facto, divided society according to families' economic capacity and created a system that reinforced the existing inequalities.

7. That must be appraised against the alarming expansion of private schools in Chile; 94 per cent of enrolment in those schools is from the wealthiest quintile, while two thirds of those in public schools are from the poorest half of the population.[1]

8. At present, as a result of the vision embraced by the President, Chile is going through a historic period of transition in education. The Government has embarked on the process of remedying the devastation caused by almost 30 years of market-based approaches in education, which led to educational disperities, with high levels of school segregation and stratification fraught with structural discrimination.[2]

9. The current reforms seek to dismantle the grossly inequitable education system that resulted from the pursuit of liberal economic policies in the field of education and to restore education as a public good, putting an end to for-profit education. A series of new education laws is being adopted in Chile and new bills are under discussion with the aim of

[1] Education for All, "Global Monitoring Report 2013/4: Teaching and learning: achieving quality for all", p. 10. Available at http://fr.unesco.org/gem-report/sites/gem-report/files/UNESCO_LAC_Factsheet_EN_new.pdf.

[2] See "Decommodifying education in Chile? Bachelet's reforms in the face of persistent educational inequalities", *Education in Crisis*, 5 May 2014. Available at www.educationincrisis.net/blog/item/1122-decommodifying-education-in-chile?-bachelets-reforms-in-the-face-of-persistent-educational-inequalities.

dismantling the legacy of market-based policies in education. The developing legal framework shows how State obligations under international human rights instruments can be incorporated into the domestic legal order, leading to policy and programmatic measures at the national level.

10. The Special Rapporteur pays tribute to the President for ushering in far-reaching reforms that recognize education as a right, not a commodity, and for the new education model in which for-profit education has no place.

III. International obligations undertaken by Chile concerning the right to education

11. Chile, as a State party to several international human rights instruments, has undertaken legal obligations concerning the right to education. It has ratified the International Covenant on Economic, Social and Cultural Rights, which covers the right to education comprehensively. It is also a State party to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, which prohibits any discrimination in education based, inter alia, on national or social origin, economic condition or birth. Moreover, Chile has ratified the Convention on the Rights of the Child, which establishes the right to education and outlaws discrimination based on social origin and property. It is also a State party to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. All those international human rights instruments enshrine the fundamental principle of equality of opportunity in education.

IV. National legal system concerning the right to education

12. The transformations currently under way in the Chilean education system are epitomized by the emerging national legislation in the field of education, which is premised upon the right to education as a constitutional right.

A. Constitutional provisions

13. The right to education is enshrined in the Constitution of Chile of 1980. Under the provisions of article 19, paragraph 10, of the Constitution, the right to education is guaranteed to all persons. The Constitution establishes that the State must provide special protection for the exercise of that right. It obliges the State to grant free access to, and to finance, the educational system for the last year of preschool and throughout the primary and secondary levels. At those levels, education is compulsory for the entire population and must be free of charge.

14. Article 19, paragraph 10, of the Constitution also establishes the objective of education, which is the complete development of the individual at the various stages of life. It provides that parents have the preferential right and duty to educate their children. It also establishes that it is the duty of the community to contribute to the development and improvement of education.

15. In that context, the Special Rapporteur notes that, although the right to education is not included in article 20 of the Constitution, which lists the rights that have constitutional recourse to protection, in proceedings involving violations of human rights, the judiciary's broad interpretation has included the right to education, thus paving the way for its justiciability.

B. Emerging national legislation

16. The reform process has resulted in a series of legislative initiatives, some of which have already been adopted as new laws and policies, while other proposals are in the pipeline as bills.

17. The General Education Act of August 2009 (No. 20.370) is a landmark piece of legislation as it provides for the national education system to be built on the rights enshrined in both the Constitution and the international instruments ratified by Chile (art. 3). It establishes the State's obligation to safeguard equality of opportunities and inclusive education, and especially to reduce inequalities in the education system (arts. 3 and 4).

18. The Inclusive Education Act of 2015 (No. 20.845), which came into force on 1 March 2016, on the eve of the Special Rapporteur's visit, is a key pillar of the reforms. It is of paramount importance in providing a legal framework for building an inclusive education system and safeguarding the right to education as an entitlement. Virtually all the people with whom the Special Rapporteur spoke during his visit referred to the Act as the most significant step in the reform. The Act is key in paving the way in the long term for a paradigm shift in education to the point where the State will assume full responsibility as guardian and protector of the right to education.

19. The Inclusive Education Act gives additional weight to key policy concerns regarding quality in education, as reflected in Act No. 20.501 of February 2011 on quality and equity of education.[3] Moreover, Act No. 20.903 of March 2016, which establishes a system for teachers' professional development, is intrinsically linked to quality of education.

20. The Special Rapporteur's visit coincided with the promulgation of Act No. 20.911, which establishes the Civic Education Plan for accredited educational establishments.[4] The aims of the Plan include promoting students' knowledge and understanding and commitment to the human rights recognized in the Constitution and in the international instruments signed and ratified by Chile. The Act is commendable as it values ethics as a means of strengthening development within a framework that has the human being at its centre.

21. Act No. 20.910 on the establishment of 15 new technical education centres,[5] promulgated in March 2016, is another landmark piece of legislation that contains radical reforms in higher education to widen opportunities to different socioeconomic contexts and respond to the needs and requirements of local and national development.

22. The Special Rapporteur appreciates the fact that in redesigning the education system and the new legal framework in Chile, reference is systematically being made to international human rights instruments relating to the right to education. The Inclusive Education Act is intended to ensure that all persons can realize their right to quality education, in accordance with the provisions of the Constitution and the international instruments that Chile has ratified and are currently in force. The bill on the national public education system contains similar provisions.

23. Moreover, new education laws in several key areas in Chile are notable examples in the context of the Sustainable Development Goals, adopted by the General Assembly at the United Nations summit for the adoption of the post-2015 development agenda, held in September 2015. Goal 4 is to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. More specifically, target 4.1 is to ensure, by 2030, that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes. The adoption of the new laws was significant pursuant to the commitments made in May 2015 by Chile and Governments from all over the world to the Incheon Declaration: Education 2030: Towards inclusive and equitable quality education and lifelong learning for all, and the Education 2030

[3] See www.leychile.cl/Navegar?idLey=20501.
[4] See www.leychile.cl/Navegar?idNorma=1088963.
[5] See www.leychile.cl/Navegar?idNorma=1088775.

Framework for Action adopted by UNESCO in November 2015 to modernize legislation on education as a fundamental right and a public good.

24. During his visit, the Special Rapporteur was extensively briefed by national and local authorities about the bill on the national public education system, colloquially referred to as the "demunicipalization" bill. It is a significant piece of the legislative reform, and the Special Rapporteur hopes it will be enacted soon. Its main purpose is to restore national control over the management of education, which was decentralized to the municipalities during the dictatorship. The bill seeks to eliminate social segregation and, like the Act on Inclusive Education, it focuses on equal rights and opportunities, while attempting to achieve comprehensive and inclusive quality education.

25. The Special Rapporteur welcomes the bill on the rights of the child, which provides for the financial resources necessary to give all children equal opportunities to access preschool education. The bill pays particular attention to vulnerable children, including children with disabilities. It proposes the creation of a new high-level interministerial institutional council to guarantee the rights of the child, including a dedicated ombudsperson. It bears witness to the high priority Chile gives to the rights of the child.

V. Freedom of teaching and its constitutional limits

26. The Special Rapporteur is encouraged that the drive towards modernizing education laws remains the main tenet of the current reforms. That drive has been facilitated by subjecting freedom of teaching to international and constitutional obligations concerning the right to education in order to ensure that freedom of teaching is not unfettered and is not allowed to impede the reform that is under way.

27. In keeping with the principle of freedom of teaching, schools, including religious institutions, have been providing education in Chile in the name of parents' and guardians' liberty to ensure their children's religious and moral education in accordance with their own convictions. The Special Rapporteur was told that one example of a religious institution that placed significant emphasis on human rights was the Silva Henríquez Catholic University in Santiago.

28. In Chile, market forces have been allowed to operate in education in the name of freedom of teaching. In his meeting with members of the Constitutional Court, the Special Rapporteur learned about the request of some members of Congress to declare the Act on Inclusive Education unconstitutional, and he was informed that discussions over freedom of teaching were fraught with difficulties and centred around two conflicting views. Some people were emphasizing the fact that freedom of teaching was linked to the idea that the State should not regulate, whereas others took the position that the State should better regulate freedom of teaching in order to guarantee the right to education.

29. The Court determined that regulating the right to education did not violate freedom of teaching and that freedom of teaching was not an end in itself, but a means of ensuring the right to education. The Court prioritized, in line with the country's constitutional and international obligations, the right to education over freedom of teaching. The Constitutional Court should be applauded for the fact that, confronted with conflicting views and intense legal discussions, it resolved not to impede or jeopardize human rights-based education reforms in Chile.

30. It is now clearly established that the exercise of freedom of teaching in Chile is subject to certain conditions: (a) schools must obtain State authorization and official recognition; and (b) schools are entitled to educational freedom regarding curricula only within the minimum standards set by the State. In addition, the owners of private schools that do not receive subsidies may conduct selective entrance tests. However, establishments owned by the State and subsidized private schools cannot conduct selective entrance tests, except for schools requiring early specialization, such as in the arts, for which tests may be conducted from the seventh grade. In such cases, the tests cannot include academic content.

31. The Special Rapporteur recalls that the liberty of individuals and bodies to establish and direct educational institutions is not unfettered. As provided for in the International

Covenant on Economic, Social and Cultural Rights (art. 13 (3) and (4)), such freedom in education is subject to compliance with minimum standards to which all private educational institutions are required to conform, in line with the provisions of international human rights instruments. The failure to do so constitutes a violation of the right to education. Freedom of teaching does not give any provider of education the freedom to undermine education as a public good or to subordinate it to private interests to the detriment of the social responsibility to educate. The concept of freedom of teaching is not contrary to the public provision of education as a core and overriding responsibility of the State. The State remains the guardian of the right to education in all circumstances.

VI. Transforming the education scenario

32. Having gone through almost three decades of privatization in the field of education, Chile has some of the deepest and most persistent educational inequalities in Latin America. The current reforms are valuable in that they have clearly triggered a process of national transformation with a paradigm shift. A new model of education founded on equitable access to good quality public education is taking shape with laws and policies as its foundation.

A. Developments in preschool education

33. After her election in 2006, President Bachelet initiated a major overhaul of early childhood care, building many thousands of new childcare facilities and establishing a national child development initiative, *Chile crece contigo* (Chile grows with you), for all children under 5 years of age. In 2015, some 49 per cent of children aged 1-5 were enrolled in preschool education with public funding. A concerted effort has been made to make children from the poorest 40 per cent of households eligible for free childcare in crèches (under 2) or kindergartens (aged 2 and 3). The importance of those developments must be appraised in the context of the new bill on the rights of the child (see para. 25 above).

B. Developments in basic education

34. As regards the provision of basic education,[6] there are currently three types of school in Chile, depending on the way they are funded:

(a) Public schools run by the State and managed mostly by the municipalities, where education is provided free of charge. In 2011, 40 per cent of pupils attended those schools;

(b) State-subsidized private schools, which have shared funding comprising State subsidies and private funding by students' families,[7] almost all of which are managed by private owners. In 2011, 53 per cent of pupils attended those schools;

(c) Independent private schools, entirely funded by students' families who pay the fees charged by the schools. In 2011, 7 per cent of pupils attended those schools.[8]

35. All three types of school have been serving sharply stratified socioeconomic groups, with 70 per cent of students in municipal public schools from the lowest-income households, against 75 per cent of students in private schools from the highest-income quintile.[9] In addition, owing to the great variation among municipalities in terms of their

[6] The term "basic education" is used in the present report to denote primary and secondary education, since that term is used in the Constitution of Chile.

[7] Prior to the 2015 Act on Inclusive Education, all schools receiving a State subsidy, whether municipal or private, could also levy monthly charges to students.

[8] Organization for Economic Cooperation and Development (OECD), *Education at a glance 2014: OECD indicators* (OECD Publishing, 2014), p. 416.

[9] José Luis Drago and Ricardo D. Paredes, "The quality gap in Chile's education system", *CEPAL Review*, No. 104 (August 2011), p. 164.

capacity, political will and professional skills, the municipal system of education in Chile led to great disparities in quality among public schools. According to the Ministry of Education, there are plans to introduce a performance agreement based on a new deal with municipalities on education under which each municipality will undertake to implement a series of initiatives agreed in 2015.

36. Such disparities show the importance of the bill on the national public education system, which seeks to create a national education system of uniform quality, with the overall responsibility of the national Government being to provide better management while decentralized implementation powers are retained at the municipal level.[10]

37. The 2015 Inclusive Education Act is another landmark piece of legislation in that it is aimed at doing away with disparities in access to education. It establishes the State's duty to guarantee the conditions necessary to ensure that everyone enjoys the right to inclusive quality education. It provides that admission processes must be transparent and prohibits schools from requesting the information that was used in the past to exclude students on the grounds of socioeconomic background, educational level, marital status and the financial position of the student's family.

38. The Act does away with the shared funding system and prohibits schools that receive State subsidies from profiting from the subsidies. The shared funding system was introduced under Act No. 19.247 of 15 September 1993 on donations with educational purposes, allowing both subsidized private schools at the primary and secondary levels and municipal public schools at the secondary level to charge enrolment fees to a maximum level while continuing to receive subsidies. Years later, subsidized private schools were allowed to charge additional monthly fees on top of the shared funding payments. The implementation of the Inclusive Education Act will give all families the freedom to choose any educational establishment irrespective of their economic situation or ability to pay, and access to education free of charge.

C. Developments in higher education

39. Higher education comprises three types of establishment in Chile:

(a) Universities providing professional and technical higher education, which can issue academic degrees;

(b) Professional institutes providing both professional and technical education, which cannot issue academic degrees;

(c) Technical education centres providing technical higher education. Professional institutes and technical education centres primarily serve students from the first three lowest-income quintiles.

40. While enrolment in higher education has significantly increased in recent years, covering some 40 per cent of the population aged between 18- and 24-years-old by 2014,[11] access is still largely determined by family income. About 80 per cent of students are enrolled in private universities and currently, higher education in Chile is mostly private and very expensive.

41. In order to obtain a place at university, candidates have to take the university admission examination, which is conducted by the Department of Evaluation, Measurement

[10] Article 5 of the bill provides for the establishment of the Public Education Directorate, a centralized public service reporting to the Ministry of Education. Article 10 provides for the establishment of Local Public Education Services as functionally and territorially decentralized public services in 15 different regions. The text of the bill is available at www.mineduc.cl/wp-content/uploads/sites/19/2015/12/Mensaje-1174-363-Proyecto-de-Ley-que-Crea-el-Sistema-de-Educacion-Publica-firmado.pdf.

[11] National Human Rights Institute, "Complementary report: International Covenant on Economic, Social and Cultural Rights", March 2014, p. 52. Available at http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHL/INT_CESCR_IFL_CHL_18457_E.pdf.

and Educational Registry at the University of Chile. The examination is open to all graduates of secondary education, but the results are largely dependent on the cumulative effects of accessing primary and secondary education at various degrees of quality, leaving behind most vulnerable groups.

42. Moreover, universities seek out government accreditation, in some cases through unreliable means as the accreditation gives access, inter alia, to student loans and grants, which in turn allow the university to increase enrolment and thus expand the chances of making a profit. Accreditation has sometimes been granted for one or two years only, allowing the institution to charge fees for the duration of a university course beyond accredited years. If no accreditation is granted for the forthcoming years, universities are compelled to close, having collected fees for future studies and leaving students in debt and with no academic institution in which to continue their studies.

43. The issue of access to education as a right came to the centre of the national debate in the wake of the massive student protests and public demonstrations that took place in 2006 and in 2011 against Chilean privatized education, which has resulted in gross inequities in education. Most of the students' demands targeted issues concerning the legal possibility of making a profit from education at all levels and the need to alleviate the burden on families, particularly that posed by financing university studies.

44. At the time of the Special Rapporteur's visit, the higher education reforms were still being shaped. They are expected to provide quality assurance and a new accreditation system, create public institutions and modify the financing scheme for research, development and innovation. The Special Rapporteur trusts that the reforms will include a participatory process and that, when adopted, they will increase institutional capacity to absorb the growing number of students and will improve the quality, capacity and funding of higher education institutions.

45. During his visit, the Special Rapporteur learned of a commendable decision by the Government to expand the public higher education system and open two new public universities in regions that do not currently have one: Aysén and O'Higgins.

D. Technical and vocational education and training and skills development

46. There are few accredited establishments in Chile that provide technical and vocational education,[12] among other reasons because they are unable to access State funding. The system for accessing public funds for technical education establishments and students was designed with a university-centred education in mind. Therefore, requirements to access those funds are not compatible with the needs and abilities required in technical and vocational education. As a result, it has been difficult for those establishments to access State funding and for their students to achieve the university-like performance required to access grants and loans.

47. The Government recognizes that technical and professional education is key to sustainable development for building a better future. Quality and relevance, linked with the productive and social environment and the social value of professional and technical education, are three pillars of action of the reform in that sector of strategic importance.

48. The Special Rapporteur welcomes the decision to expand technical higher education by opening 15 public technical education centres, one in each region of Chile. That fills the current gap in tertiary level public education. It shows that the Government is committed to fostering high-quality professional technical education that empowers its beneficiaries for individual and social transformation. According to the law adopted in March 2016 for establishing the centres, each one will be linked to a public university with institutional

[12] According to official data, virtually all the existing technical training centres, both professional institutes and technical training centres, are private. There are only 7 such establishments that are accredited and non-profit, representing a marginal proportion of the 50 tertiary education establishments, including universities, that currently exist in Chile.

accreditation. The centres, which will gradually come into operation, will also enable access to continuing education for skills development along with civic education.

49. During his visit, the Special Rapporteur was briefed about a national qualifications framework for technical and vocational training that is being developed by the Ministries of Education and Labour and Social Security to enable the organization of learning processes as a continuum. The framework aims at standardizing the qualifications of students in the education system, promoting lifelong learning through the certification of skills and the recognition of prior learning, with a focus on skills for occupational needs. It highlights the relevance of education and training to match people's needs in a socio-productive environment.

50. The Special Rapporteur also learned about efforts by the Ministry of Labour and Social Security to increase training in cooperation with the private sector to create opportunities to certify skills and to link training to job programmes within the education system. Such innovative approaches are useful for creating opportunities for employment, entrepreneurship and the emerging needs for lifelong learning.

E. Equity-based measures for minimizing disparities in education

51. The historic reforms being pushed forward by the current Government are an unprecedented attempt to strengthen equity by improving educational opportunities. The Special Rapporteur welcomes schemes for introducing an equity-based education system in Chile. Already in 2008, Act No. 20.248 on preferential school subsidies provided additional subsidies to public and private schools receiving State subsidies for all students from the lowest-income quintile. The Inclusive Education Act goes further by replacing the shared funding system with additional State subsidies in order to relieve families of the burden posed by the shared funding payments.

52. The Special Rapporteur visited Hermana María Goretti municipal primary school in Santiago. The quality of the services it provides earned it additional public resources, which are being invested in personalized education for vulnerable children, including those from low-income families.

53. Another important measure provided for under the Inclusive Education Act is the introduction of a quota system in education. In 2005, Decree No. 196 established that all subsidized schools must have at least 15 per cent of students from the lowest-income families in order to continue receiving the subsidy. In 2016, claims made by some Congress members against the Inclusive Education Act before the Constitutional Court reopened quota-related discussions. The Court concluded that quotas were constitutional, especially if the State financed them. Thus, subsidized private schools have to accept, under the quota system, 15 per cent of their students from low-income families. According to information provided by the Ministry of Education, more than 5,000 non-profit educational establishments currently receive subsidies to support free education. From March 2016, a 20 per cent increase in the preferential school subsidy will benefit more students.

54. The Special Rapporteur visited the Liceo Mariano Latorre, a technical high school in Santiago in which the majority of children are from low-income families, which has developed programmes to complement technical education with humanistic approaches, including programmes to improve school relations and school life. That has had a positive impact on the quality of life of children who experience family violence and has helped to improve the dropout rate in recent years.

55. The Special Rapporteur was encouraged to learn about other programmes and measures, including the assistance and effective access programme, which targets discrimination by providing assistance for students and guaranteeing university places for the top 15 per cent of students at the school, in terms of performance.

VII. Some challenges in fully implementing the reform agenda

56. Entitlement to education in terms of access, especially to basic education free of charge, and empowerment through the acquisition of knowledge, values, competencies and skills as quality components are two interrelated pillars of the right to education that are also reflected in education reforms in Chile. The Special Rapporteur highlights below some of the key challenges in implementing the reform agenda.

A. Full realization of the right to inclusive education

57. The challenges implicit in implementing the laws in the field of the right to education, especially the Inclusive Education Act, are enormous in terms of eliminating segregation, overcoming disparities and promoting an egalitarian and inclusive education system. All those who remain underserved — indigenous people, persons with disabilities, migrants and other marginalized sectors of society, especially victims of poverty — need to be provided with equitable opportunities for education.

58. The higher level of schooling for urban as compared to rural populations compromises equity. The privatized system of education in Chile has undermined the provision of public education. Increased efforts are needed to improve conditions in schools in remote and rural areas and to eliminate disparities in access to quality education between urban and rural areas (see CRC/C/CHL/CO/4-5, para. 68 (d)).

59. The Government needs to step up efforts to ensure equal education opportunities for rural and indigenous girls. There is a large number of indigenous students. The number and size of scholarships for indigenous students are too small to allow recipients to cover educational expenses in institutions other than those located in indigenous communities or settlements (see CERD/C/CHL/CO/19-21, para. 15). The Special Rapporteur recognizes the importance of further measures to develop a bilingual intercultural education system, as stipulated in the Indigenous Peoples Act (No. 19.253), and to include indigenous groups' concerns in the education reform.

60. The General Education Act requires that educational establishments that have a high percentage of indigenous students should follow courses that maintain their mastery of the indigenous language and their knowledge of the history and culture of their people. It is important that curricula for children, young people and adults recognize the diversity of their cultures and ethnic origins and teach the language, world view and history of their peoples of origin in order to foster harmonious dialogue in society.[13] The Special Rapporteur emphasizes that changes in cultural perception are important for building a new, integrated society.

61. Chile also has to cope with the educational needs of migrants resulting from the influx from neighbouring countries. During his mission, the Special Rapporteur visited the Liceo de Hombres high school in Antofagasta where both girls and boys study together at all compulsory levels of education, preschool, primary and secondary, and where the number of foreigners enrolled is higher than that of nationals. He noted that, with integration programmes and creative pedagogical techniques, the school constitutes a good example of inclusive education that does not allow discrimination or exclusion in education.

62. The Special Rapporteur notes the progress achieved in terms of granting equal opportunities to children with disabilities, as reflected in Act No. 20.422 of 2010 and various decrees establishing norms for inclusive education. In that connection, the importance of the Convention on the Rights of Persons with Disabilities for removing barriers to inclusive education must be recognized. During his mission, the Special

[13] National report submitted to UNESCO in 2007 on measures taken between 2000 and 2005 to implement the Convention against Discrimination in Education, quoted in the UNESCO submission to the 2014 universal periodic review of Chile, p. 3. Available at www.ohchr.org/EN/HRBodies/UPR/Pages/UPRCLUNContributionsS18.aspx.

Rapporteur visited the Girasol public nursery school in Antofagasta and witnessed the sound structure of the building, the recreational areas and the classrooms for all children, and the fact that there were specialized teachers to take care of children with special needs.

B. Realization of the right to quality education

63. The poor quality of public education continues to result in high levels of segregation and discrimination along socioeconomic lines. Chile needs to take all measures necessary to eliminate the sharp disparities in quality of education that currently exist between private, subsidized and public schools and to ensure that all schools have adequate infrastructure and suitably trained teaching staff (see E/C.12/CHL/CO/4, para. 30 (b)).

64. Privatization in education has thrived on false propaganda, leading to the belief that for-profit private education is of better quality than public education. The findings of the Organization for Economic Cooperation and Development have dispelled such misconceptions. Despite their claims, some private schools have poor buildings and the use of short-term contracts and young lower-cost teachers damages the teaching profession. Such schools are not a model for a modern country like Chile.

65. The Special Rapporteur recognizes the importance of the bill on the national public education system, which seems promising in terms of the provision of quality education to enable students to access learning opportunities for comprehensive development.

66. The Government has taken a series of institutional measures in order to implement Act No. 20.529 of 2011 establishing the national system to ensure the quality of and to supervise preschool, basic and intermediate education, and some provisions of the 2009 General Education Act. They include the creation of the National Education Council to assess preschool, primary and secondary school curricula; the establishment of the Quality Education Agency to assess students' learning achievements and evaluate schools' results by conducting investigations and publishing reports on themes such as the relationship between the socioeconomic status of the family, or students' gender, and academic success; and the establishment of the Office of the Superintendent of Education to ensure that schools have the necessary elements to guarantee quality education, as provided by the law.[14]

67. The Special Rapporteur was briefed about the system to ensure the quality of education.[15] It evaluates the education system on subjects such as language and communication (comprehension in reading and writing), mathematics, natural sciences, history, geography and social science. The Government is currently redesigning evaluations to better reflect the principles embedded in the education reform such as creativity, social inclusion, problem-solving and teamwork. The Special Rapporteur also learned that, in order to improve the quality of public education, a strategic school infrastructure plan has been put in place; an action plan was designed in 2015 for the system to ensure the quality of education and equity at all levels; and a new national assessment plan for 2016-2020 was approved as part of the national evaluation system.

68. The aims of education as laid down in international human rights instruments are an essential element in the drive towards quality, and the importance attached to human rights values in education in Chile is a laudable feature of the reforms. The aims of education are reflected in the Inclusive Education Act, which stipulates that the education system should be directed towards the full development of the human personality. The bill on the national public education system is aimed at promoting the knowledge, understanding and commitment of students and their human rights and contains provisions on enhancing their full development in the spiritual, ethical, moral, emotional, intellectual, artistic and physical sphere. It thus enriches the aims of education. Fostering common human rights values pursuant to Act No. 20.911 establishing the Civic Education Plan is indispensable today in order to counter the trend towards the pursuit of material values and the mere instrumental

[14] See www.leychile.cl/Navegar?idNorma=1028635.

[15] See www.simce.cl.

role of education. That is critically important, as the humanistic mission of education is being vitiated today.

69. The quality of education depends on its content in terms of the curriculum. An important feature of the education reforms in Chile is that all schools will be required to operate within a national normative framework for quality. The framework will provide for flexibility to adapt and contextualize curricula, with certification at each stage of education. That will allow schools to adapt curricula to the diversity of students' needs and cultural contexts.

70. The deployment of qualified and trained teachers with professional development is indispensable for quality education. The Special Rapporteur welcomes Act No. 20.903 establishing a system for teachers' professional development. The Act is expected to bring about improvements in teachers' development and the value that society attaches to the teaching profession. With a new selection process, teachers are expected to be better accredited and qualified, and to receive higher salaries.

71. However, the Special Rapporteur notes with concern that nearly 20 per cent of all teachers are contractual and community teachers in Chile.[16] That makes the teaching profession precarious and results in its de-professionalization, which should not be allowed.

72. The Special Rapporteur also notes some programmes that have recently been set up, including a postgraduate programme for basic education teachers and an improvement programme for technical-professional secondary school teachers.

VIII. Towards a legal framework for financing education

73. The magnitude of the reforms at all levels of education demands huge resources. The Special Rapporteur notes that the implementation of almost all the laws, policies and programmes involved in the education reform requires fresh budgetary support. However, according to information provided by the Ministry of Education, the resources devoted to several key areas in 2015 were meagre, with 6 per cent of the national education budget being allocated to improvements and renovations, 6 per cent to pedagogical support, 7 per cent to improving management skills and only 3 per cent to fostering the educational community's participation in decision-making.

74. The Government will have to inject much more funding into the education reform process in order to, inter alia, expand access to good quality public education, provide free textbooks and eventually ensure higher education free of cost.

75. The Special Rapporteur commends President Bachelet for putting a premium on the education agenda as regards its linkage with tax reforms to provide enhanced financial resources for public education. That responds to the State's responsibility under international human rights law and the national Constitution to provide resources for the realization of the right to education and is a notable example of mobilizing domestic resources for education.

76. Budget allocations for education need to have a firm and durable basis. A legal framework is a crucial requirement for ensuring that political and financial support is sustainable. Efforts to promote the expansion of education opportunities may fail if they are not well anchored in a legal framework that guarantees sustained State investment in the sector and recognizes the strategic importance of education as a foundation for human development.

77. Given that Chile has adopted new education laws, it is necessary for it to adopt a law on financing education in order to ensure that the reform process is not constrained by a lack of resources. Such a law could build on article 19 of the Constitution and on article 4

[16] Education for All, "Global Monitoring Report 2013/4", p. 257. Available at www.uis.unesco.org/Library/Documents/gmr-2013-14-teaching-and-learning-education-for-all-2014-en.pdf.

of the General Education Act, which lay down the State's obligation to fund an education system that is free of charge and is aimed at ensuring access to all, including students up to 21 years of age in secondary education.

78. A legal framework for financing education would make it possible to devote the resources necessary to education on a durable and sustainable basis. Within the legal framework, policies and schemes can be devised to encourage the corporate sector to assume its social responsibility and to contribute to domestic resources for education, as is the case in several countries.

IX. Regulating private educational establishments

79. The Special Rapporteur welcomes the importance attached to eliminating for-profit education in State-subsidized educational establishments, premised upon the principle of education as a public good as part of the reform process.

A. Banning subsidized private educational establishments from making a profit through education

80. The Inclusive Education Act contains a commitment to progressively and completely eradicate for-profit education in State-subsidized schools by 31 December 2017. In addition, it requires those schools to invest all the resources generated for educational purposes and makes them subject to audit by the Office of the Superintendent of Education.

81. However, the Act applies to compulsory education only; it does not prohibit for-profit education in the first years of preschool. Moreover, it does not prohibit schools from making a profit from other areas linked to education, including consultancy, food, textbooks and uniforms. Furthermore, national discussions have taken place on the for-profit nature of educational technical agencies, which were allowed to be legally established as for-profit organizations.

B. Obligation to pursue educational purposes

82. One important element of the Inclusive Education Act is the development of the concept of educational purposes through the definition of 11 categories of expenditure associated with the Institutional Education Project of each school so that public resources are used only for one of those categories. According to the Act, public resources and any surplus should be reinvested in the Project, thus eliminating profit-making in subsidized schools. As a result, all schools receiving State subsidies are required to become non-profit entities no later than 31 December 2017 so that their operations have only educational purposes.

83. The Special Rapporteur deems it important to apply the criterion of "educational purposes" equally to all education providers, irrespective of whether they receive a State subsidy, in order to ensure that there is no place for for-profit education in the education system.

C. Banning profit-making in all private educational establishments

84. While profit-making in subsidized private schools is progressively being banned in Chile, profit-making private schools can still be established under Act No. 3.654 of 1982 on compulsory primary education, as long as they do not receive a State subsidy. Such schools remain outside the purview of the Inclusive Education Act and, as with for-profit organizations, they collect fees from students. That constitutes a major limitation of the education reforms, which do not cover the entire spectrum of private schools but thus far, only schools receiving State subsidies.

D. Scrutiny of financial operations of private providers of education

85. During his visit, the Special Rapporteur was informed by the President of the Senate Education Committee that nationalizing independent private schools was out of the question on account of the huge sums of money claimed by the proprietors as compensation for the real estate costs involved in running those establishments. Proprietors and owners of independent private schools may make exaggerated claims when their "edu-business" is questioned, for instance, because of the high costs of school infrastructure and buildings, including real estate, and the need for compensation for inflated financial losses. They may resist reforms and steps taken towards scrutinizing their financial operations.

86. The Special Rapporteur considers that full scrutiny of the financial operations of private providers of education, whether they are subsidized by the State or not, is of paramount importance. The State has a legal obligation as well as a political and moral responsibility to regulate the free market in education. Corporate interests and corporate funding of higher education, which can result, for instance, in charging exorbitant fees, raise questions not only about the affordability of higher education, but also ethical questions when universities compromise their social function to engage in profit-making in the name of academic independence.

87. The Special Rapporteur recalls that, in accordance with the international norms and principles governing the right to education, the overall conditions of provision of education in private educational establishments, including the fees charged to students, are subject to control and regulation in the same way that such establishments cannot pursue a curriculum that is not in line with the national curriculum. Private providers of education can assume their social responsibility to complement the public provision of education, but under no circumstances can they reduce education to business. The Special Rapporteur is of the view that the concept of education as a right, not a commodity, a concept that has been embraced by President Bachelet, should by definition be applicable to all private educational establishments, whether or not they are subsidized.

88. As such, putting an end to for-profit education must encompass the entire education system and all providers of education. Considering that private providers may seek to maximize profits from education, strict rules and regulations are required to control revenue accruing to owners of private educational establishments from all sources, notably by way of tuition fees. Public authorities can establish policies that permit only reasonable fees to be charged by private providers, with a ban on raising these fees without prior approval. The need to regulate fees in private educational establishments is clear when one considers that there are currently unaccredited technical training centres that are charging higher average fees than their accredited counterparts.

E. Regulatory framework

89. The State is the legitimate authority to implement strict financial regulatory measures covering all aspects of the education provided by all private educational establishments. A strong regulatory framework is needed in order to effectively curb the for-profit pursuit of education. Under the relevant international instruments, States' obligations to respect and protect the right to education are relevant regardless of whether the provider of education is public or private. Chile should develop and implement a regulatory and monitoring framework for the private education sector ensuring respect for the principle of non-discrimination and promoting inclusion and respect for diversity (see CRC/C/CHL/CO/4-5, para. 68 (b)).

90. Human rights principles and public interest in education require that financial fraud and covert and corrupt practices in education are rigorously investigated with transparency and full accountability, and those found guilty of indulging in such practices brought to justice. It is important to look into public procurement policies and their applicability to private providers of education.

91. The Inclusive Education Act establishes obligations for subsidized private schools to furnish information on their operations, giving the Superintendent of Education the

authority to supervise the utilization of the subsidy. Subsidy recipients are required to maintain accounts of the subsidies, which are intended exclusively for educational purposes. If profit-making in education is to be eliminated, those accountability obligations need to be extended to all private educational establishments, whether or not they receive subsidies from the State.

92. It is also important to look into practices concerning the payment of rent for school buildings in private schools and to regulate such transactions and school management, taking a stringent approach based on legitimacy and fairness. The Special Rapporteur trusts that any entity establishing a private school, irrespective of whether it receives a State subsidy, is required to be duly registered with the competent public authorities as a recognized legal entity with all the accountability that goes with that status.

93. The need for a stringent regulatory system is demonstrated by the closure of the Universidad del Mar. Following endorsement by the National Accreditation Committee in 2010 regarding the quality of undergraduate teaching and the institutional standing of the university, students enrolled at the university were able to access State assistance programmes to finance their education. In May 2012, an auditing and supervision process culminated in legal proceedings against the university on the grounds that it had illegally accessed accreditation. The charges included the concurrent use of State resources in the university's operations and serious non-compliance with its academic commitments. The academic authorities were found to lack adequate training and some were operating with fake degrees.[17] Such cases must be avoided in other higher education institutions and steps taken to prevent them from fraudulently accessing accreditation, or legally accessing accreditation but for a few years only.

F. Main parameters of the regulatory framework

94. Abusive and fraudulent practices may be closely linked to the pursuit of education for profit and should be effectively sanctioned. A comprehensive, sound regulatory framework with a system of sanctions is necessary to ensure that "edu-business" has no place in any education system. Such a framework should be prescriptive, prohibitive and punitive. Prescriptive regulations should clearly establish the conditions under which private providers may be permitted to operate within the framework of international human rights law and constitutional law. Human rights instruments include binding minimum norms and standards with which private educational establishments must comply.

95. Prohibitive regulations are necessary to outlaw for-profit education and curb false commercial propaganda. Such regulations must impose a ban on exorbitant fees such as those currently charged in some Chilean private universities.

96. Punitive measures are necessary to ensure compliance with the law and to ensure that fraudulent practices are punishable and the perpetrators brought to justice. Nationally designated authorities should undertake full-scale investigations of fraudulent practices, defining appropriate sanctions. Sanctions with criminal proceedings may be necessary for fraudulent and corrupt practices that jeopardize the realization of human rights.

X. Conclusions and recommendations

97. **It is of paramount importance to safeguard the right to education fully against the forces of privatization, and to maintain education as a public good in line with obligations under international human rights law.**

98. **The unprecedented education reforms being ushered in in Chile are laudable in that they will dismantle the legacy of market-based approaches in education that have**

[17] National Human Rights Institute, "Complementary report: International Covenant on Economic, Social and Cultural Rights", March 2014, p. 53. Available at http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CHL/INT_CESCR_IFL_CHL_18457_E.pdf.

led to a highly segregated and discriminatory education system. The Special Rapporteur welcomes the new model of education embraced by the Government, embodying the vision of President Bachelet, which recognizes education as a right, not as a commodity, and in which for-profit education should have no place. The Special Rapporteur is encouraged to see that the emerging national legal system is in accordance with international standards, which constitute the basis of the reforms.

99. The Inclusive Education Act of 2015 is a significant step in the reform process in that it ensures everyone's entitlement to have access to public education without discrimination or exclusion, free of charge. The right to education is therefore no longer determined by economic situation or social status.

100. Likewise, the focus on promoting quality at all levels of education in Chile is a welcome development. Policies and laws are being designed to broaden access to public higher education and budgetary support is being increased for candidates from disadvantaged backgrounds. The opening of new public technical education centres is also an important token of the Government's commitment to creating new avenues of public education geared to skills development. In addition, new laws and policies currently under development enrich the aims of education with human values and ethics and civic education, as well as professional development for the teaching profession.

101. The challenges implicit in the effective implementation of laws in the field of the right to education, especially the Inclusive Education Act, are enormous in ensuring equitable opportunities for education to all those who remain underserved, especially the victims of poverty. Building an inclusive education system is indeed a demanding task, and one in which the Government should spare no effort. Giving concrete shape to the reform agenda calls for more effective implementation of the new laws to promote education as a core public function and to ensure that all private providers assume their social responsibility in the provision of education. Chile must take all possible measures to discharge its responsibility as the guarantor and regulator of education as everyone's fundamental human right. Education as a public good should be safeguarded across the entire education system.

102. Bearing in mind those conclusions and the issues highlighted in the present report, the Special Rapporteur makes the recommendations set out below.

Putting an end to for-profit education in all private educational establishments

103. The State should take appropriate legislative and policy measures to prohibit for-profit education at all levels of education and in all private educational establishments. As many private providers seek to maximize profits from education, strict rules and regulations are required to control the financial operations of all private educational establishments, whether or not they are subsidized.

104. The Government should step up the reforms so as to eradicate all profit-seeking forces in all private educational establishments, irrespective of whether they receive a State subsidy, and so as to restore education as a core public function and social responsibility.

105. It is important to look into public procurement policies and their applicability to private providers of education. The State is the legitimate authority to exercise regulatory power covering all aspects of the education system.

Controlling abusive practices

106. The State should develop strict rules and regulations to control revenue accruing to private schools, especially by way of fees charged and revenues accruing to such providers. The regulatory framework should be prescriptive, prohibitive and punitive so that private providers abide by the law and do not violate the norms and principles of the right to education. Financial fraud and covert corrupt practices in education must be rigorously investigated with transparency and full accountability, and those found guilty of indulging in such practices must be brought to justice.

107. **The Superintendent of Education should have the authority to ensure the accountability of private providers of education. Nationally designated authorities should undertake full-scale investigations of fraudulent practices, including tax evasion by private providers of education. Chile should ensure that the financial operations of all private educational establishments are regularly scrutinized and that the resulting information is publicly shared.**

Reporting obligations of private educational establishments

108. **Regulations should prescribe full financial and performance reporting requirements for all private educational establishments. It should be obligatory for all such establishments to report regularly to the designated public authorities on their financial operations, in line with prescriptive regulations, and to declare, in a fully transparent manner, that they are not engaged in for-profit education.**

Promoting the justiciability of the right to education

109. **The right to education is a justiciable right, and public policies should promote its justiciability so that any person can approach a court of law to enforce their right in case of violation, especially by a private educational establishment. The judiciary and quasi-judicial bodies such as the National Human Rights Institute and the office of the ombudsperson, which is provided for in the forthcoming law on the rights of the child, should be encouraged to look into violations of the right to education *suo moto*. Recommendations made by such mechanisms should be implemented by the Government.**

Establishing a legal framework for financing education

110. **The provision of adequate resources for education is indispensable in the pursuit of the reforms, as the Government will need to devote many more resources in order to extend good quality public education, including technical higher education. Chile should build on tax reforms as an important measure for increasing the national budget for education.**

111. **Public policies and schemes can be devised to encourage the corporate sector to assume its social responsibility and to contribute to domestic resources for education, as is the case in several countries.**

112. **Given that Chile has adopted new education laws, it is necessary for it to adopt a law on financing education. Such a law would ensure that public resources for education are available on a durable and sustainable basis, especially considering that education is not only a right in itself, but is essential for the exercise of all other human rights.**

Extending opportunities for good quality public education

113. **In order to completely dismantle for-profit education, Chile should extend opportunities for good quality public education. It must build trust in the public education system as a provider of quality education. If good quality public education, which is a core responsibility of the State, is freely available, there is no reason why any parent would want to opt for private education.**

114. **Chile should develop standards for quality assurance and a national qualifications framework along with a system of assessment for technical and vocational education and training that is equally applicable throughout the country.**

Publicizing laws in the field of education

115. **The new education laws should be widely publicized in order to create greater public awareness about the right to education as a constitutional right. Ideally, Chile should share its experience and its new education model with other countries and with the international community.**

Promoting freedom of teaching with all its limits

116. **A nationwide awareness-raising campaign should be launched for a better understanding of freedom of teaching with all its limits, in accordance with international norms, so as to ensure that the principle of the right to education is not distorted to allow unfettered privatization.**

117. **In accordance with the international norms and principles on the right to education, fees charged to students in all private educational establishments should be subject to control and regulation, in the same way as such establishments cannot pursue a curriculum that is not in accordance with such norms and principles. Under no circumstances should education, which is a social responsibility, be allowed to be reduced to business. The concept of education as a right, not a commodity, applies to all private educational establishments, regardless of whether they are subsidized.**

Putting human rights values and ethics through education upfront

118. **The Government should accord special importance to developing the Civic Education Plan, in accordance with Act No. 20.911, with the focus on values and ethics for strengthening development based on the notion of the centrality of the human being. That should be reflected in the national curriculum as the core content of education, attaching paramount importance to the humanistic mission of education. In that context, the subjects that are currently evaluated under the system to ensure the quality of education should be broadened to cover the aims of education established in various laws with the focus on human rights values and ethics so as to make evaluation comprehensive.**

119. **Recognizing teachers as the custodians of quality education, the Government should do away with contractual teaching so as to improve the status of the teaching profession.**

Promoting lifelong learning and skills development

120. **All interested parties should cooperate to strengthen the programmes currently being implemented by the Ministry of Labour and Social Security to increase training in conjunction with the private sector to create opportunities not only to certify skills, but to link training for job programmes within the education system.**

Ensuring public interest and social responsibility in higher education

121. **New legislation in the field of higher education should seek to foster professional excellence, promote academic independence and ensure that universities do not deviate from their social function or become subject to corporate interests.**

122. **The forthcoming legal and policy reform on higher education should take full account of the internationalization of higher education and its repercussions in Chile. Questions related to the accreditation of higher education institutions and the recognition of degrees and qualifications are important to consider, with the full participation of the academic community, including students. Consideration should also be given to striking a balance between the autonomy of universities and their social functions, considering that a large number of universities in Chile are private.**

Fostering indigenous languages and culture

123. **Reforms aimed at inclusive education should fully recognize the need to guarantee indigenous people the right to education. Greater attention should be given to programmes for promoting indigenous languages and culture in the course of the implementation of the Indigenous Peoples Act of 1993, with the full participation of indigenous people.**

Encouraging and supporting the role of the intellectual community and civil society organizations

124. **The Special Rapporteur calls upon civil society organizations and the intellectual community, as well as students, parents and community associations, to join with the Government in fostering a culture that values education as a human right, a noble cause and a social responsibility in which private profit has no place. Research, events and expert consultations in that regard should be encouraged and supported.**

125. **The Special Rapporteur welcomes the transforming landscape of education in Chile; it affirms that education is not a privilege of the rich, but everyone's inalienable right. The efforts being made by Chile to change the current education system and to lay the foundations for future cultural change must be supported. The international community, the United Nations and all stakeholders should not miss the opportunity to support Chile in its efforts to safeguard the right to education against the forces of privatization and to preserve education as a public good. The principles of social justice and equity should be at the forefront of the reforms ushered into the education system to build a better Chile for the current and future generations.**